IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3482 OF 2004

Rajkumar Shitalprasad Kaknani ..Applicant.

V/s.

State of Maharashtra & anr. .. Respondents.

Shri A. G. Galla i/by Lalla & Lalla for the Applicant.
Shri A.S. Gadkari, APP for Respondent -State.
Shri D.N. Salvi for Respondent No.2.

CORAM : A.M.KHANWILKAR, J.
DATED : 25.10.2004

PC :-

. Heard learned counsel for the parties. Perused the record.

2. The applicant is charged for the offence punishable under section 8(C), 21 and 28 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The role of the applicant is stated to be different to the prime accused, who used to obtain contraband items from accused No. 3 through accused No.1. The materials on record including the statements of the applicant as well as co-accused Zakir and Ismail, does indicate that the conspiracy was hatched to procure 20 kgs. of heroin for which advance payment to the

extent of Rs. 15 lacs was also offered. The fact that the intercepted fiat car, which is owned by the applicant, no contraband items have been recovered, makes no difference to the offence punishable under section 28 of the Act, which is for attempting to commit such offences. It is seen from the materials on record that cash of Rs. 15 lacs is recovered from the Fiat car, which is owned by the applicant. Taking over all view of the matter and the materials on record including the statements of the concerned accused, recorded under section 67 of the Act, it is not possible to take the view that the applicant is not guilty of the alleged offence. The case of the applicant cannot be treated on par with the accused No.8, who has been released by this court by order dated July 19,2004. The said accused has been enlarged on bail on the finding that he had no knowledge about the illegal activities and the conspiracy hatched by the other accused. The applicant has not produced copy of the order passed by the court below, rejecting the application preferred by the applicant. But the learned APP submits that more or less the reasoning as recorded above have been recorded by the court below in rejecting the bail application. Counsel for the applicant, further

contends that reference to section 37 of the Act, has no application to the case in hand because offence under section 28 is not referred to in section 37 of the Act. This argument clearly overlooks the facts and circumstances of the present case that the applicant is alleged to have attempted to commit offence, which was referable to commercial quantity as specified under the NDPS Act and accordingly the co-accused have been chargesheeted for the said offence. There is ample material on record to suggest that the applicant and other co-accused was to transport contraband items, which was to be far in excess of the commercial quantity. Taking any view of the matter, no case for interference. Hence, rejected.

3. Counsel for the applicant submits that although the offence is registered in the year, 2002 trial has not proceeded. This is however, because of non-availability of the accused No.3 for the progress of the trial. If the trial court is of the opinion that the presence of accused No.3 cannot be procured for the purpose of trial in a reasonable time then it may consider to separate the trial for accused No.3 so that atleast the trial against other accused can

proceed expeditiously. Ordered accordingly.

. Authenticated copy be issued.

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